

United States Bankruptcy Court

For the NORTHERN District of IOWA

Chapter 7

IN RE:

DONALD HAROLD COLBY,
Debtor.

Case No. X91-02277F

FILED
U.S. BANKRUPTCY COURT S.C.
NORTHERN DISTRICT OF IOWA

AUG 17 1992

BARBARA A. EVERLY, CLERK

JUDGMENT

- ☒ This proceeding having come on for trial or hearing before the court, the Honorable
WILLIAM L. EDMONDS, United States Bankruptcy Judge, presiding, and
the issues having been duly tried or heard and a decision having been rendered.

[OR]

- ☐ The issues of this proceeding having been duly considered by the Honorable
WILLIAM L. EDMONDS, United States Bankruptcy Judge, and a decision
having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED:

that James H. Cossitt, trustee of the estate of Donald H. Colby
shall recover from Donald H. Colby the sum of \$484.00 and the
costs of this proceeding, and shall recover from Donald H. Colby
and Terry Guinan, jointly and severally, the sum of \$2,640.50
in attorney's fees and costs.

Vol. III
Page 125



copies mailed with order
on 8/17/92, B

BARBARA A. EVERLY
Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: 8-17-92

By: Laura Slough
Deputy Clerk

FILED
U.S. BANKRUPTCY COURT S.C.
NORTHERN DISTRICT OF IOWA
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BARBARA A. EVERLY, CLERK

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award of \$3,426.50. He also asks for an opportunity to update the itemization in order to cover fees and expenses incurred in this litigation since May 18, 1992. The additional itemization would include time spent on post-trial matters and on the August 12 hearing.

Each time entry in the attorney's itemization is identified by a transaction number, and each shows the date of the transaction, the time spent and a description of the work. Having considered the fee affidavit, attorney Cossitt's testimony and the arguments of counsel, the court finds that \$2,510.00 in fees and \$130.50 in expenses should be awarded to the trustee as a result of the violation of the stay.

Damages will not include the time expended on February 5, 1992 (transactions 52427 and 52428). This work involves normal investigative duties of the trustee. With one exception, the same holds true for the first two time entries for February 7, 1992 (transactions 45521 and 45524). The exception is the time spent reviewing attorney Guinan's letter to the MHA. (See transaction 45521). The court will include .20 hours of time in the attorney fee award. Time shown (2.40 hours) on the third entry for February 7 will be allowed in its entirety (transaction 45525). This entry involves the preparation of the motion to enforce the stay. The time shown in the two entries on February 10 will not be compensated, as the trustee was required in any event to attend to meetings of creditors in Fort Dodge (transaction 45757). The conference with the debtor and the debtor's

attorney involved the gathering of information relevant to the administration of the estate, not just the prosecution of the stay litigation (transaction 45758). Similarly, the time shown for February 12 will not be compensated (transaction 45777). The dispute regarding the extension of the time in which the trustee might assume leases is not considered by the court to be part of the stay dispute. The time spent on February 20 in the amount of .50 hours will be compensated (transaction 46107).

Time spent from February 24 through 27 (transactions 46858 through 52429) includes both compensable and non-compensable items. Some of the work appears to relate to the trustee's normal duties in administering estate property (see transactions 46858 and 52429). The bulk of the time, however, appears to involve discovery in the stay litigation. Trustee requests compensation for this period for 4.60 hours. Compensation will be awarded for 3.10 hours. Of the 1.10 hours requested for February 24 (first entry, transaction 46858), .50 hours will be compensated. The court estimates how much time the preparation of the notice took and will allow compensation for that. However, the production of the extensive list of documents will not be compensated because it appears to be work related to the trustee's normal duties of administration. Attorney Cossitt testified that he uses a minimum time entry for letter writing of .20 hours. This enables Cossitt to receive compensation for the law firm's overhead costs and for secretarial time. This is an impermissible practice. A legal secretary's time in producing a

letter, and the firm's overhead in the production of letters are a part of the cost of doing business. Compensation for these costs is part of the attorney's hourly rate. It should not also be added to the time billed by the attorney. The attorney is to record ACTUAL time in any application for compensation or proof of damages. For this reason, only .70 hours will be compensated for transaction 46859. For transactions 46880, 46881, and 46894, all time, in the total amount of 1.40 hours will be compensated. On February 27 (transaction 52429), three letters were written. The letter to the insurance agent will not be compensated as it appears to be part of the trustee's administrative duties. The letters to the utilities will be compensated in the amount of .50 hours.

The telephone discussion held on February 28, 1992, will not be compensated as it also appears to involve matters other than the stay litigation (transaction 46907). The second entry for February 28 (transaction 46908) and the following transactions will be compensated in full as relating to the litigation: 46913, 46944, 46985, 46986, 46989. These entries total 2.70 hours. Compensation for the letters written to witnesses on March 9 will be at 50 per cent of the request because of the attorney's practice of billing for the secretary's time and office overhead. Thus, compensation for the letters will be allowed in the amount of .40 hours (transaction 52430).

Transaction 47336 will be allowed in the amount of .30 hours. However, a letter written to attorney Guinan the same

date (March 12) will not as it relates to the assumption of leases, not the stay litigation (transaction 47337). Entries 49401, 52431, 50607, 50917, 50608, and 50613 involve trial preparation and will be compensated in the requested total amount of 3.10 hours. Trial preparation time spent on May 6 (transaction 50614) will not be fully awarded. By that date, attorney Cossitt would have known that the debtor had not received post-petition payments from the Fort Dodge Municipal Housing Authority. Therefore, as to the payments from that agency, no proof of damages was necessary. It was, therefore, unnecessary to prepare and call a representative of the Authority, Paula Anderson, merely to "set the record straight." The court will allow 2.50 hours of trial preparation time as part of transaction 50614. Of the request, .30 hours will not be compensated. Transaction 50641 will be allowed in the amount of 1.30 hours. Only .30 hours will be allowed on the .60 hour request shown as transaction 50642. The purpose of the disallowance is to delete time spent preparing Paula Anderson as a witness. The court will award compensation for 3.80 hours of trial time (transaction 50643). Time spent for briefing and reviewing the opposing briefs will be compensated as requested in transaction entries 50919, 50920 and 52432. These entries total 4.50 hours.


The total hours which will be compensated in the damage award is 25.10. These hours will be compensated at a rate of \$100.00 per hour, for a total damage award of attorney's fees of

\$2,510.00. All expense entries will be compensated except the \$6.00 lunch. The award of costs will thus be \$130.50.

The trustee asks that he be able to supplement his damage request by filing another affidavit to cover fees incurred in dealing with post-trial motions. (Debtor's post-trial motions were dismissed without prejudice as being premature.) Alternatively, trustee asks the court to award an estimated amount to cover post-trial legal fees. The debtor objects. The court declines to adopt either alternative. An estimate of post-trial fees would be speculation, and the court does not desire further hearings on damages with each additional hearing creating further claims. The damages will be fixed as of May 18, 1992.

IT IS ORDERED that James H. Cossitt, trustee of the estate of Donald H. Colby shall recover from Donald H. Colby the sum of \$484.00 and the costs of this proceeding, and shall recover from Donald H. Colby and Terry Guinan, jointly and severally, the sum of \$2,640.50 in attorney's fees and costs.

SO ORDERED ON THIS 17th DAY OF AUGUST, 1992.



William L. Edmonds, Bankruptcy Judge

I certify that on 8-17-92 copies of this order and a judgment were sent by U. S. mail to: Debtor, Terry Guinan, James H. Cossitt and U. S. Trustee. JS

United States Bankruptcy Court

NORTHERN

District of IOWA

In re

DONALD HAROLD COLBY

Bankruptcy Case No. X-91-02277-F

Debtor

Plaintiff

v.

Adversary Proceeding No.

Defendant

WRIT OF EXECUTION TO THE UNITED STATES MARSHAL

Name and Address of Judgment Creditor
James H. Cossitt, Bankruptcy Trustee for
the estate of Donald Colby
535 Main Street
Ames, IA 50010

Amount of Judgment:

\$ 484.00

Clerk's Fee:

\$

Other Costs:

\$

Interest From: 8/17/92

\$ -00.00-

Costs of this writ:

\$

vs.

Name and Address of Judgment Debtor
Donald H. Colby, RR 1, Fort Dodge, IA 50501

WEBSTER COUNTY SHERIFF
TO THE UNITED STATES MARSHAL FOR THE ~~DEPUTY MARSHAL~~
You are directed to levy upon the property of the above named judgment debtor to satisfy a money judgment in accordance with the attached instructions.
TO THE JUDGMENT DEBTOR:
You are notified that federal and state exemptions may be available to you and that you have a right to seek a court order releasing as exempt any property specified in the marshal's schedule from the levy.

DEC 15 1992

Date

Barbara A. Everly
Clerk of the Bankruptcy Court
BARBARA A. EVERLY

UNITED STATES MARSHAL'S RETURN

I received this writ on _____, and executed the same on _____.
(date) (date)

United States Marshal

By: _____

Deputy Marshal

*original returned to
James Cossitt 12-15-92*

*Recorded Vol III
page 125*

United States Bankruptcy Court

NORTHERN District of IOWA

In re

DONALD HAROLD COLBY

Bankruptcy Case No. X-91-02277-F

Debtor

Plaintiff

v.

Adversary Proceeding No.

Defendant

WRIT OF EXECUTION TO THE UNITED STATES MARSHAL

Name and Address of Judgment Creditor
James H. Cossitt, Bankruptcy Trustee for
the estate of Donald Colby
535 Main Street
Ames, IA 50010

Amount of Judgment:

\$ 2,640.50

Clerk's Fee:

\$

Other Costs:

\$

Interest From: 8/17/92

\$ -00.00-

Costs of this writ:

\$

vs.

Name and Address of Judgment Debtor
Donald H. Colby, RR 1, Fort Dodge, IA 50501
Terry W. Guinan, P.O. Box 896, Fort
Dodge, IA 50501

WEBSTER COUNTY SHERIFF

TO THE UNITED STATES MARSHAL FOR THE

~~XXXXXXXXXX~~

You are directed to levy upon the property of the above named judgment debtor to satisfy a money judgment in accordance with the attached instructions.

TO THE JUDGMENT DEBTOR:

You are notified that federal and state exemptions may be available to you and that you have a right to seek a court order releasing as exempt any property specified in the marshal's schedule from the levy.

DEC 15 1992

Date

Barbara A. Everly
Clerk of the Bankruptcy Court
BARBARA A. EVERLY

UNITED STATES MARSHAL'S RETURN

I received this writ on _____, and executed the same on _____.
(date) (date)

United States Marshal

By: _____

Deputy Marshal

*original returned to
James Cossitt 12-15-92*

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FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
JUN 09 1993

BARBARA A. EVERLY, CLERK

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

IN RE: * No. X-91-02277-F
DONALD H. COLBY, * SATISFACTION OF JUDGMENT
Debtor. *

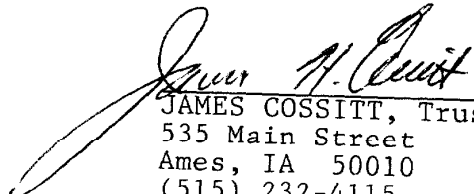
COMES NOW the Trustee, James Cossitt and acknowledges satisfaction of judgment against Donald Colby in the above entitled action in order to conclude the settlement made with Donald Colby as previously set forth in the application for settlement now on file.

The Trustee further states that irregardless of whatever further orders may or may not be entered in the above entitled action regarding this judgment, the Trustee covenants that he will never proceed to take any action against Donald Colby to collect any such judgment and will affirmatively take whatever action is necessary to release any such judgment on any property of Donald Colby in the event that might ever become necessary.

Further the Trustee states, that this action is being taken with the full understanding of all of the circumstances and that judgment stands released whether or not any further

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action is taken by the Court on the application now on file whether expected or unexpected.


JAMES COSSITT, Trustee
535 Main Street
Ames, IA 50010
(515) 232-4115

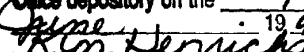
SWORN TO BEFORE ME on this 28th day of May, 1993


NOTARY PUBLIC



copy to:

Terry W. Guinan
U. S. Trustee

The undersigned hereby certifies that 1
copies of the foregoing instrument was served upon
each of the attorneys of record of all parties to the
above-entitled cause by enclosing the same in an
envelope addressed to each attorney at his
respective address as disclosed by the pleadings of
record herein, with postage fully paid and by
depositing said envelope in a United States Post
Office depository on the 7th day of
June, 1993.


UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
OCT 24 1994

BARBARA EVERLY, CLERK

In Re:

DONALD HAROLD COLBY,

Debtor.

NO. X-91-02277-F

RELEASE AND SATISFACTION OF JUDGMENT

Now on this 20 day of October, 1994, comes the Bankruptcy Trustee in the above mentioned matter and satisfies the judgment filed 08/17/92 (Vol. III, Page 125), interest and costs in full.

By James H. Cossitt
James H. Cossitt, Bankruptcy
Trustee

Dated this 20 day of October, 1994.

ACKNOWLEDGMENT

STATE OF IOWA)
) ss.
COUNTY OF STORY)

On this 20 day of October, 1994, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared James H. Cossitt, Bankruptcy Trustee, to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

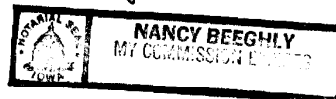
Nancy Beeghly
NOTARY PUBLIC - STATE OF IOWA

Original filed -- Sioux City

Copy to:

Terry W. Guinan, Esq.
P.O. Box 896
Fort Dodge, IA 50501
ATTORNEY FOR DEBTOR

U.S. Trustee
Law Building, Suite 400
225 - 2nd Street S.E.
Cedar Rapids, IA 52401



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PROOF OF SERVICE

The foregoing instrument was served upon all parties listed herein by depositing a copy thereof in the U.S. Mail, postage prepaid, in envelopes addressed to each of the parties at their respective addresses on the 20th day of October, 1994. The undersigned declares under penalty of perjury that the foregoing is true and correct.

Nancy Beghly